THE CONVEYANCER AND PROPERTY LAWYER

AUSTRALIA AND NEW ZEALAND
The Law Book Company Ltd.
Sydney : Melbourne : Perth

CANADA
The Carswell Company Ltd.
Agincourt, Ontario

INDIA
N. M. Tripathi Private Ltd.
Bombay
and
Eastern Law House,
Calcutta and Delhi
M.P.P. House,
Bangalore

ISRAEL
Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

MALAYSIA : SINGAPORE : BRUNEI
Malayan Law Journal (Pte.) Ltd.
Singapore and Kuala Lumpur

The Conveyancer and Property Lawyer

EDITORS

MAGAZINE: DR. H. W. WILKINSON
Solicitor, Reader in Law, University of Bristol

PRECEDENTS: J. E. ADAMS
Solicitor, Emeritus Professor of Law at Queen Mary College, London

CASENOTES: JILL MARTIN
Professor of Law at King's College, London

LONDON
SWEET & MAXWELL
1989

Published in 1989 by
Sweet & Maxwell Limited of
South Quay Plaza,
183 Marsh Wall, London
and printed in Great Britain
by The Eastern Press Limited
of London and Reading

ISBN 0 421 42290 4

All rights reserved. No part of this publication
may be reproduced or transmitted, in any form or
by any means, electronic, mechanical, photocopying,
recording or otherwise, or stored in any retrieval
system of any nature, without the written permission
of the copyright holder and the publisher,
application for which shall be made
to the publisher.

©
Sweet & Maxwell Limited
1989

CONVEYANCER'S NOTEBOOK

A New Deal for NIMBYS. *Compensation for Land Acquisition* 221
Alive, Alive-O. *Bain* v. *Fothergill Walks—Just* 75
An Underdog's Charter. *Privity of Contract and Estate* 145
Arise, Awake: The Goal is Yours. *Going Dutch* 381
Charity Clampdown—Or Not? Charities: *A Framework for the Future* 301
Common Land (Rectification of Registers) Act 1989. *Dwelling-houses Wrongly Registered as Common Land* (Alec Samuels) 384
Competition Spot. *Here We come Gathering* 14
Cooling-off in Australia. *Stamping on Gazumping* 10
Get Me to the Court on Time. *Illuminating Instructions* 154
Instalment Contracts. *Relief Against Forfeiture in England and Australia* 307
Like What I Said. *Sacred Calf or Golden Bull?* 315
Making Waives. *Conditional Contracts* 225
Nothing to lose but your Dominos. *An Alternative to Conveyancing Chains* 228
Our Cashless Society. *Deposits—No Time for a Change!* 377
Repealed but Not Forgotten. *Statute Interpretation* 151
The Old Order Changeth. *Gaps in the General Development Order* ... 78
What's Mine is Your Loss. *Transfer of Land, Passing of Risk* 1
Would You Buy a Used Car . . . ? *Caveat Emptor in Sales of Land* ... 69

PRECEDENTS EDITOR'S NOTES

Don't Arbitrate, Litigate!—Service Charge Disputes 15
Falling Out Over Right to Buy Arrangements 155
Look How Far We've Come—More Thoughts on Modern Drafting ... 80
Sub-Sales, Land Charge Registrations and New Restrictive Covenants—I 232
Sub-Sales, Land Charge Registrations and New Restrictive Covenants—II 317
The Demise of the Side Letter? 386

ARTICLES

ABANDONING PLANNING USES—PUBLIC OR PRIVATE CONCEPTS? By Colin Crawford 403

"ALL LIABILITIES" RESERVATION OF TITLE CLAUSE AND COMPANY CHARGES. By Gerard McCormack 92

AN INTRODUCTION TO ECCLESIASTICAL CONVEYANCING. By David W. Rees 82

CHARITABLE COVENANTS: A BENEFIT OR NOT? By Debra Morris 321

CHARITY AND TRUSTS FOR THE PUBLIC BENEFIT—TIME FOR A RE-THINK? By Susan Bright 28

CONTROL OF TRUSTEE DISCRETIONS. By N. D. M. Parry 244

CONVEYANCERS AND THE PROCEEDS OF CRIME. By David Feldman 389

FAREWELL SECTION 40. By Professor P. H. Pettit 431

IMPLIED COVENANTS FOR TITLE IN REGISTERED FREEHOLD LAND. By David Partington 18

JUDICIAL TREATMENT OF EXTORTIONATE CREDIT BARGAINS—1. By Lionel Bently and Geraint G. Howells 164

LOANSHARKS AND EXTORTIONATE CREDIT BARGAINS—2. By Lionel Bentley and Geraint G. Howells 234

MORTGAGE FRAUD, EQUITABLE PRIORITIES AND OVERRIDING INTERESTS. By Marc Beaumont 158

MORTGAGE PROTECTION PROVISIONS—2. By Dr. Stanley Robinson 412

MORTGAGES—CARE AND PROTECTION—1. By Dr. Stanley Robinson ... 336

NO DONATIO MORTIS CAUSA OF REAL PROPERTY—A RULE IN SEARCH OF A JUSTIFICATION. By C. E. F. Rickett 184

PAYROLL GIVING—THE STORY SO FAR. By Debra Morris 175

PRESCRIPTION UNDER MISTAKE. By Gilbert Kodilinye 261

RENT REVIEWS IN RESIDENTIAL TENANCIES. By D. N. Clarke 111

SURRENDER OF RENT ACT TENANCIES. By Stuart Bridge 98

TELEVISION RECEPTION AND THE TORT OF NUISANCE. By Richard Kidner ... 279

THE BUILDING SOCIETIES OMBUDSMAN SCHEME: A LEGAL INNOVATION. By Stephen Edell 253

THE DISCOVERABILITY OF OCCUPIERS OF REGISTERED LAND. By Peter Sparkes 342

THE EFFICACY OF TRUSTEE EXEMPTION CLAUSES IN ENGLISH LAW. By Paul Matthews 42

THE FALL AND RISE OF THE REMEDIAL CONSTRUCTIVE TRUST? By P. T. Evans 418
THE STRANGER AS CONSTRUCTIVE TRUSTEE REVISITED. By Margaret Halliwell 328
THE TEXTBOOK APPROACH TO MODERN LAND LAW. By M. P. Thompson ... 268

CASES NOTED

A. G. Securities *v.* Vaughan ... ... *P. F. Smith* 128
Antoniades *v.* Villiers .. .. *P. F. Smith* 128
Armour *v.* Thyssen Edelstahlwerke A.G. ... ... *John de Lacy* 364
Att.-Gen. (*ex rel* Yorkshire Derwent Trust Ltd.) *v.* Brotherton ... *Angela Sydenham* 448
Barth *v.* Pritchard ... ... *P. F. Smith* 455
Becton Dickinson U.K. Ltd. *v.* Zwebner ... . *Patrick Mcloughlin* 292
Berger (deceased), *Re* .. .. *J.E.M.* 444
Buckinghamshire County Council *v.* Moran . *Gerard McCormack* 211
Davies *v.* Peterson ... ... *J.E.M.* 287
Department of the Environment *v.* Royal Insurance plc ... *J.E.M.* 55
Essex Plan Ltd. *v.* Broadminster Ltd. ... ... *J.E.M.* 55
Estavest Investments Ltd. *v.* Commercial Express Travel Ltd. ... *Chris Rodgers* 196
Gisborne *v.* Burton ... ... *Chris Rodgers* 196
Henry Smith's Charity *v.* Wagle ... ... *J.E.M.* 124
Hetherington, *Re* ... ... *N. D. M. Parry* 453
Hilton *v.* Plustitle Ltd. . ... *Chris Rodgers* 196
Husky Oil Operations Ltd. *et al v.* Shelf Holdings Ltd. ... ... *Bruce Ziff and Moe Litman* 296
J. Sainsbury plc *v.* Enfield L.B.C. ... ... *J.E.M.* 355
Kemmis *v.* Kemmis ... ... *Jane E. S. Fortin* 204
Kusminow *v.* Barclays Bank Trust Co. Ltd. . ... *J.E.M.* 444
Lester *v.* Ridd ... ... *J.E.M.* 124
McNerry *v.* London Borough of Lambeth ... . *P. F. Smith* 216
Midland Bank *v.* Pike .. .. *N. S. Price* 133
Midland Bank plc *v.* Shephard ... ... *Brenda Dale* 63
Milton (Peterborough) Estates Company *v.* Harris . ... *J.E.M.* 192
Moss *v.* Mobile Oil Co. Ltd. ... ... *J.E.M.* 55
M.R.A. Engineering Ltd. *v.* Trimster Company Ltd. ... *J.E.M.* 355
Newnham *v.* Wilkson ... ... *J.E.M.* 355
Nicolson *v.* Pitt .. .. *J.E.M.* 192
Ogwr B.C. *v.* Dykes ... ... *J.E.M.* 192
Orlando Investments Ltd. *v.* Grosvenor Estate Belgravia . *P. F. Smith* 371
Perry *v.* Phoenix ... ... *N. S. Price* 133
Robert Thackray's Estates Ltd. *v.* Kaye ... ... *Stuart Bridge* 450
Rudd *v.* National Trust ... ... *Alec Samuels* 127
Simpson and Others *v.* Simpson and Another ... *Brenda Dale* 63
Smith *v.* Eric S. Bush (A Firm) ... ... *Claire Francis* 359

Smith *v.* Northside Developments Ltd. ... ... *J.E.M.* 55
Stribling *v.* Wickham ... ... *J.E.M.* 192
Tollbench Ltd. *v.* Plymouth City Council ... ... *J.E.M.* 124
Trustees of the Gift of Thomas Pocklington *v.* Hill . ... *J.E.M.* 287
Waddock *v.* Cheniston Investment Ltd. ... ... *J.E.M.* 287
Webb *v.* Barnet London Borough Council ... ... *J.E.M.* 124
Whiting *v.* Whiting ... ... *J.E.M.* 444
Williams *v.* Johns ... ... *J.E.M.* 444
Ye Olde Cheshire Cheese Ltd. *v.* Daily Telegraph plc ... ...
Robert G. Lee and Peter Luxton 59

THE LIBRARY

Gadsden: The Law of Commons ... ... *J. G. Riddall* 137
Moffat and Chesterman. Trusts Law, Text and Materials .. ... *Brenda Sufrin* 142
Sauvain: Highway Law . ... *J. G. Riddall* 460